

COPY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

DATE: AUG 13 1997

SUBJECT: Deferral to CERCLA authorities of the
Gary Development Company, Inc.
Site, IND 077 005 916FROM: Joseph M. Boyle, Chief *JMB*
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics DivisionTO: Frank J. Rollins, Chief
Response Section III
Emergency Response Branch
Superfund Division

The purpose of this memorandum is to inform you of the status of the Gary Development Company, Inc. (GDC) site in Gary, Indiana, under the RCRA program and provide our recommendation regarding cleanup of this site in light of the RCRA Deferral Policy. We have determined that closure and post-closure activities cannot be carried out at GDC, a facility that should have had RCRA interim status, due to the reasons outlined below. Therefore, we recommend deferral of this site to the Superfund program.

BACKGROUND

On May 30, 1986, U.S. EPA issued a RCRA § 3008(a) administrative complaint and compliance order, which alleged that GDC accepted hazardous waste for disposal at their landfill which had neither achieved interim status under RCRA, nor obtained a RCRA permit. The Order required GDC to close the facility, conduct groundwater monitoring, and pay a penalty. On April 4, 1996, and after two hearings on the matter, a Decision and Order was issued by Administrative Law Judge Greene in favor of U.S. EPA. On June 21, 1996, GDC appealed the Decision and Order to U.S. EPA's Environmental Appeals Board (EAB). GDC's appeal was dismissed as untimely by the EAB on August 16, 1996. On September 24, 1996, GDC commenced a civil action in the United States District Court for the Northern District of Indiana. GDC alleged in the civil action that the EAB wrongfully dismissed its appeal as untimely and sought

a demand to the EAB for consideration of the merits of its appeal. After settlement negotiations, U.S. EPA and GDC entered into a Consent Decree (CD) on July 30, 1997 (a copy of the CD is attached). Under the CD, which settles GDC's challenge to the May 30, 1986, Complaint and Compliance Order, U.S. EPA releases its claims against GDC under the complaint in exchange for a payment of \$126,000. The CD requires GDC to pay \$86,000 as civil penalty, and to create a trust fund with substantially all its remaining assets (\$40,000) which designates the Indiana Department of Environmental Management as a beneficiary. As established by the CD, the monies in the trust fund are to be used for the purpose of performing closure and post-closure care of the landfill, and conducting a ground-water quality assessment program. In addition, the monies should be used for remediation of contamination and/or the prevention of releases of hazardous substances at the site.

We have determined that the monies from the trust fund are insufficient to complete closure and post-closure activities at the site. Therefore, we recommend that additional remediation activities be conducted at the site outside RCRA authorities.

Based on the above, the GDC site is deferred to the Superfund program to be addressed under the authorities of CERCLA.

If you should have any questions, please contact Mirtha Capiro, of my staff, at 886-7567.

Attachment

cc: Arlene Haas, ORC
Rett Nelson, ORC